plaintiff, however, used the part which passed inspection. He sued to recover the damages incurred by reason of his having to buy lumber from others at advanced prices. The defendant insisted that the contract was entire and that plaintiff if he rejected part must reject all; and that, as he had used a part, he must be deemed to have accepted the whole. *Held,* that the contract was divisible and that plaintiff might recover the damages claimed. *Canton Lumber Company of Baltimore City* v. *Liller* (1908), — Ct. App. Md. —, 68 Atl. Rep. 500.

The rule is that in case of an entire contract a vendee, if he sees fit to reject, must reject in toto and put the seller in statu quo. *Rubin* v. *Sturtevant,* 51 U. S. App. 286; *Morse* v. *Brackett,* 98 Mass. 205; *Mansfield* v. *Trigg,* 113 Mass. 350; *Cohen* v. *Platt,* 69 N. Y. 348. But if the contract is severable, he may reject or accept different parcels, according to their conformity to the contract of sale. *Potsdamer et al.* v. *Kruse et al.,* 57 Minn. 193. And, even if the contract is one which would ordinarily be deemed entire, yet the parties may, by their conduct, so treat it as to show that they regarded it as severable in fact. *Russell and Company* v. *Lilienthal,* 36 Ore. 105; *Mansfield* v. *Trigg,* supra. The court in arriving at its decision in the principal case determined that the facts placed it within the last rule, saying that the fact that defendant removed the rejected lumber was sufficient evidence that it consented to the severance of the contract, in the absence of any evidence evincing a contrary intention. See *Holmes* v. *Gregg,* 66 N. H. 621; 28 Atl. Rep. 17; and *McCeney* v. *Duvall,* 21 Md. 166; both cases being directly in point with the principal case.

STREET RAILROADS—INJURY TO PEDESTRIAN—BURDEN OF PROOF.—Plaintiff, being about to cross a street, looked for cars on defendant's tracks and saw none; after waiting for a wagon to pass she stepped upon the track, where she was struck and injured by a street-car. *Held,* when plaintiff has shown the injury and that it was caused by defendant's car, all allegations of negligence stand proved until rebutted by proof in behalf of defendant. *Augusta Ry. and Electric Co.* v. *Arthur* (1908), — Ct. App. Ga. —, 60 S. E. Rep. 213.

The general rule, supported by innumerable decisions, is that negligence is not presumed from the mere fact of injury, but must be established by the evidence. AM. ENC. ENC. LAW TIT. NEGLIGENCE, p. 510; *Garvick* v. *United Rys. Co.,* 101 Md. 244. Under the doctrine *res ipsa loquitur* the manner of the occurrence of or the circumstances attending an injury may create a presumption of negligence, but negligence is not presumed from the injury alone, which must be naturally referable to some cause incident to the condition or operation of the railroad. *Thomas* v. *Philadelphia & Reading R. R. Co.,* 148 Pa. St. 180, 23 Atl. 989, 15 L. R. A. 416; *Chicago City Ry. Co.* v. *Rood,* 163 Ill. 477, 45 N. E. 238. As a modification of this doctrine, where injuries occur in the conduct of operations which common experience has shown can be carried on safely with the exercise of reasonable judgment, vigilance and care, the mere happening of an injury will be regarded as sufficient to warrant the submission of the question of negligence to the jury. *Jensen* v. *Thomas,* 81 Fed. Rep. 578; *Shafer* v. *Lacock,* 168 Pa. St. 497;

Ellis v. *Waldron,* 19 R. I. 369. Where the relation of passenger and carrier does not exist, several states have by statute raised such a presumption in case of fires set by railway engines. The holding in the principal case would create this presumption in any case of injury by railroads, and this appears to be the rule in Georgia, *Columbus, etc., Ry. Co.* v. *Kennedy,* 78 Ga. 646, and in Mississippi, *Chicago, etc., R. Co.* v. *Trotet,* 60 Miss. 442. The result of this holding is illustrated by the principal case, where plaintiff, though she stepped from behind a wagon directly onto the track, could, by merely showing the injury, compel the defendant to disprove allegations to the effect that the gong was not sounded and that the car was running in excess of the rate of speed, permissible under an ordinance, to the satisfaction of a jury, who must weigh it against a presumption of law, if plaintiff introduces no further evidence.

TAXATION—COMMERCE—DISCRIMINATION AGAINST PRODUCTS OF OTHER STATES.—The city of Memphis sought to tax certain logs, and lumber manufactured therefrom by the defendant, which were cut from the soil of other states and held by the defendant as the immediate purchaser, while such logs and lumber would be exempt from taxation if the product of the soil of Tennessee. *Held,* the tax violates the commerce clause of the United States Constitution by imposing a direct burden upon interstate commerce. *I. M. Darnell & Son Company and H. D. Minor* v. *City of Memphis, and Thomas J. Taylor, Trustee* (1908), 28 Sup. Ct. Rep. 247.

The power to regulate commerce, vested by the Constitution of the United States in Congress, is co-extensive with the subject on which it acts, and can not be interfered with by the states, either directly or indirectly. *Brown* v. *Maryland,* 12 Wheat. 419; COOLEY, TAXATION, 61. Accordingly, a license tax imposed by a state on a dealer in goods which are not the growth, produce, or manufacture of the state, is a tax upon the goods themselves, and, hence, is in conflict with the power vested in Congress to regulate commerce. *Webber* v. *Virginia,* 103 U. S. 344; *Walling* v. *People,* 116 U. S. 446. Also, a tax upon peddlers, who sell merchandise other than products of the state, is unconstitutional. *Ex parte Thomas,* 71 Cal. 204; *Vines* v. *State,* 67 Ala. 73; *Welton* v. *Missouri,* 91 U. S. 275. But, where all peddlers are required to take out a license and pay a tax without regard to their residence or where their wares are produced or manufactured, such a tax is not repugnant to the commerce clause. *Emmert* v. *Missouri,* 156 U. S. 296. A tax on sales at an auction is valid, which applies to all sales, whether made by a citizen of the state or not. *Woodruff* v. *Parham,* 8 Wall. 123. But a tax upon freight transported from state to state, or a tax upon the gross receipts derived from transportation of persons and property by sea between different states and to and from foreign countries, is void. *Philadelphia & Southern Mail and Steamship Co.* v. *Pennsylvania,* 122 U. S. 326; *State Freight Tax,* 15 Wall. 232. A wharfage tax on vessels laden with goods of other states is, likewise, a burden on interstate commerce. *Guy* v. *Baltimore,* 100 U. S. 434. Where goods from another state have become commingled with or a part of the general property of the state, and such goods are taxed